

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**DIANNA LYNN HARRIS**

**Plaintiff, :**

**: No. CV-01-0270**

**v. :**

**: (District Judge Conner)**

**PENNSYLVANIA BOARD OF :**

**PROBATION AND PAROLE, : (Electronically filed)**

**Defendants.:**

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION FOR  
DISMISSAL PURSUANT TO FED. R. CIV. P. 41(b) AND LR 83.3.1(a)**

**PROCEDURAL HISTORY AND RELEVANT FACTS**

This is a *pro se* action brought pursuant to, *inter alia*, the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*; Title VII of the Civil Rights Act, 42 U.S.C. §2000e-1, *et seq.*; the Age Discrimination in Employment act, 29 U.S.C. §623, *et seq.*; and 42 U.S.C. § 1983. The *pro se* plaintiff is Dianna Harris, a former employee of the Pennsylvania Board of Probation and Parole.

On February 5, 2004, the Court issued an order scheduling a status conference for February 18, 2004, and directing the parties to meet and confer

prior to the status conference in order to agree upon a revised pretrial schedule to be provided to the Court at the conference. The Court's order warned the *pro se* plaintiff that the failure to cooperate in the preparation of the revised pretrial schedule or the failure to attend the status conference could result in sanctions, including the dismissal of this action.

Counsel for defendants left several messages for plaintiff at her home and, on February 10, 2004, wrote plaintiff a letter requesting that she contact counsel for defendants in order to arrange a meeting to determine the revised pretrial schedule.<sup>1</sup> Plaintiff did not contact counsel for defendants before the status conference. Additionally, counsel for defendants attended the status conference, but plaintiff neither attended nor contacted the Court.

### **QUESTION PRESENTED**

**WHETHER THE COURT SHOULD DISMISS THIS ACTION FOR PLAINTIFF'S FAILURE TO COMPLY WITH THE COURT'S FEBRUARY 5, 2004, ORDER.**

### **ARGUMENT**

**THE COURT SHOULD DISMISS THIS ACTION FOR PLAINTIFF'S FAILURE TO COMPLY WITH THE COURT'S FEBRUARY 5, 2004, ORDER.**

Rule 41(b) of the Federal Rules of Civil Procedure and Middle District Local Rule 83.3.1 provide that a defendant may file a motion to dismiss the

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<sup>1</sup> A copy of the February 10, 2004, letter was attached to the Motion for Dismissal Pursuant to Fed. R. Civ. P. 41(b) and LR 83.3.1(a) as Exhibit 1.

complaint, and that dismissal is an appropriate sanction, when a party fails to comply with an order of the Court. Fed.R.Civ.P. 41(b); LR 83.3.1.

Counsel for defendants repeatedly attempted to contact plaintiff, both by phone and in writing, in order to comply with the Court's Order directing the parties to agree to a revised pretrial schedule. Plaintiff failed to respond.

Additionally, plaintiff failed to appear at the status conference, and has otherwise failed to prosecute this case since the Court disposed of defendants' motion to dismiss the complaint on April 3, 2003.

For these reasons, the Court should dismiss this action. Alternatively, the Court should award defendants attorney's fees in the amount of \$225.00 for the time defense counsel spent attempting to contact plaintiff, attending the status conference and preparing the motion for dismissal and supporting brief.

**CONCLUSION**

For the foregoing reasons, this action should be dismissed. Alternatively, defendants should be awarded attorney's fees in the amount of \$225.00.

**Respectfully submitted,**

**GERALD J. PAPPERT  
Attorney General**

**By: /s/Lisa W. Basial  
LISA W. BASIAL  
Deputy Attorney General  
I.D. #71554**

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**SUSAN J. FORNEY  
Chief Deputy Attorney General  
Chief, Civil Litigation Section  
  
Counsel for Defendants**

**Date: February 27, 2004**

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**DIANNA LYNN HARRIS**

**Plaintiff, :**

**:**

**No. CV-01-0270**

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**:**

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**PENNSYLVANIA BOARD OF :**

**:**

**PROBATION AND PAROLE, :**

**:**

**(Electronically filed)**

**Defendants.:**

**CERTIFICATE OF SERVICE**

I, Lisa W. Basial, Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on **February 27, 2004**, I served a true and correct copy of the foregoing **Brief in Support of the Motion for Dismissal of Action Pursuant to Fed. R. Civ. P. 41(b) and LR 83.3.1(a)** by causing it to be deposited in the United States Mail, first-class postage prepaid to the following:

Dianna Harris  
2329 Penn Street  
Harrisburg, PA 17110

s/Lisa W. Basial  
**LISA W. BASIAL**  
**Deputy Attorney General**